



Katie M. Brown
Counsel

Duke Energy
40 W. Broad Street
DSC 556
Greenville, SC 29601

O: 864-370-5296
F: 864-370-5027

Katie.Brown2@duke-energy.com

July 15, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/ Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: James T. Simmons v. Duke Energy Carolinas, LLC
Docket Number: 2021-95-E

Dear Ms. Boyd:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC's (the "Company") Motion to Compel. The Company requests the Commission compel Complainant to respond to its First Set of Interrogatories by a date certain and dismiss the Complaint should Complainant fail to provide complete responses to the Company's discovery requests by the date established by the Commission. As the Company has shown in its Motion, Mr. Simmons' responses to the Company's interrogatories are necessary for it to prepare and file direct testimony and to meaningfully participate in the hearing. DEC also requests the Commission hold its testimony deadline and the hearing in abeyance pending resolution of this Motion.

By copy of this letter we are serving the same on the parties of record.

Sincerely,

Katie M. Brown

Enclosure

cc: James T. Simmons (via U.S. Mail and email)
Alexander W. Knowles, Office of Regulatory Staff (via email)
C. Lessie Hammonds, Office of Regulatory Staff (via email)
Carri Grube Lybarker, Department of Consumer Affairs (via email)
Roger P. Hall, Department of Consumer Affairs (via email)
Heather Shirley Smith, Duke Energy Carolinas, LLC (via email)
Samuel J. Wellborn, Duke Energy Carolinas, LLC (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-95-E

IN RE:)	
)	
James T. Simmons,)	DUKE ENERGY CAROLINAS,
Complainant/Petitioner)	LLC’S MOTION TO COMPEL
v.)	RESPONSES TO
)	INTERROGATORIES BY
Duke Energy Carolinas, LLC,)	COMPLAINANT
Defendant/Respondent)	

Pursuant to S.C. Code Ann. Regs. 103-829, 103-833, and 103-835 and Rules 26, 33(a), and 37(a) of the South Carolina Rules of Civil Procedure, Duke Energy Carolinas, LLC (“DEC” or the “Company”), by and through counsel, respectfully moves the Public Service Commission of South Carolina (the “Commission”) for an order compelling Complainant James T. Simmons (“Complainant” or “Mr. Simmons”) to respond to the Company’s First Set of Interrogatories to Complainant. In light of the Company’s impending direct testimony filing deadline of August 25, 2021, and the Company’s need for the withheld information to prepare direct testimony, the Company respectfully requests the procedural deadlines, including the testimony filing deadlines and hearing date, be held in abeyance pending resolution of this motion. The Company also requests that the Commission dismiss the Complaint should Complainant fail to provide complete responses to the Discovery by a date to be established by the Commission.

In support of this Motion, the Company states the following:

I. INTRODUCTION AND BACKGROUND

On March 16, 2021, Complainant filed a complaint with the Commission alleging his power bills had increased significantly despite there being no change in his home or electricity

usage. On April 15, 2021, the Company filed an answer to the complaint, along with a motion to dismiss. On May 26, 2021, the Commission denied the Company's motion to dismiss and ordered that new prefile dates for remaining testimony be set and the matter be scheduled for a hearing. On June 2, 2021, the Clerk's Office set a new procedural schedule requiring the Complainant to file direct testimony on or before August 11, 2021, and the Company to file testimony on or before August 25, 2021, and setting a hearing date of September 22, 2021.

On June 10, 2021, the Company filed its First Set of Interrogatories to Complainant with the Commission and served a copy on Complainant via electronic mail and U.S. Mail. A copy of the First Set of Interrogatories, which consists of 15 interrogatories, is attached hereto as Exhibit A. Pursuant to S.C. Code Ann. Regs. 103-833, Complainant's responses were due on or before June 30, 2021. To date, the Company has not received any responses to its First Set of Interrogatories. Complainant's lack of a response to the Company's discovery requests prevents the Company from having access to information that is necessary for it to prepare and file direct testimony and meaningfully participate in the hearing.

II. ARGUMENT

A. Complainant's responses are deficient under SCRCP Rule 37 and S.C. Code Ann. Regs. 103-833.

Rule 37(a) of the South Carolina Rules of Civil Procedure provides that a party may move for an order compelling discovery where, as here, the responding party fails to answer an interrogatory requested pursuant to Rule 34. Further, under Commission Rule 103-833(b), "[a]ny party of record may serve upon other parties . . . written interrogatories to be answered by the party served. . . . Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer." S.C. Code Ann. Regs. 103-833(B).

The South Carolina Rules of Civil Procedure—which “govern all discovery matters not covered in Commission Regulations,” S.C. Code Ann. Regs. 103-835—allow for broad discovery as to any information “which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” Rule 26(b)(1), SCRCF. The Company’s discovery requests in this case are narrowly tailored to elicit information necessary for the Company and the Commission to assess the sufficiency and reliability of Mr. Simmons’ claims. Commission Rule 103-833 is clear—parties must answer each interrogatory served upon them, and the Commission should therefore compel Complainant to respond to each of the Company’s outstanding questions. Without an order requiring Complainant to provide responses to DEC’s interrogatories, neither the Company nor the Commission have the information necessary to evaluate the substance and credibility of Complainant’s claims.

B. The Company requests that, should Complainant continue to fail to respond to the Company’s discovery requests, that the Commission dismiss the Complaint.

The South Carolina Rules of Civil Procedure provide that if a party fails to permit discovery, the presiding court may make such orders in regard to the failure as are just, including the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule 37(b)(2), S.C.R.C.P. Pursuant to the provisions of this rule, the Company requests that the Commission dismiss the Complaint with prejudice should Complainant fail to provide the information sought in the First Set of Interrogatories.

III. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Duke Energy Carolinas, LLC respectfully requests that the Commission grant its Motion and enter an order:

1. Compelling Complainant to respond, in full, to the First Set of Interrogatories by a date certain;
2. Holding the Company's testimony filing deadline and the hearing date in abeyance pending resolution of this Motion; and
3. Dismiss the Complaint with prejudice should Complainant fail to provide complete responses to the First Set of Interrogatories by the date established by the Commission.

Respectfully submitted, this the 15th day of July, 2021.

s/ Katie M. Brown

Katie M. Brown, Counsel
Duke Energy Carolinas, LLC
40 West Broad Street, Suite 690
Greenville, SC 29601

Telephone (864) 370-5045
Katie.brown2@duke-energy.com

Samuel J. Wellborn (SC Bar No. 101979)
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Columbia, SC 29201
(803) 929-1400
swellborn@robinsongray.com

Attorneys for Duke Energy Carolinas, LLC

EXHIBIT A



Katie M. Brown
Counsel

Duke Energy
40 W. Broad Street
DSC 556
Greenville, SC 29601

O: 864-370-5296
F: 864-370-5027

Katie.Brown2@duke-energy.com

June 10, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/ Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: James T. Simmons v. Duke Energy Carolinas, LLC
Docket Number: 2021-95-E

Dear Ms. Boyd:

Pursuant to S.C. Code Ann. Regs. 103-833, please find Duke Energy Carolinas, LLC's First Set of Interrogatories to Complainant, which were served on June 10, 2021.

By copy of this letter we are serving the same on the parties of record.

Sincerely,

A handwritten signature in blue ink that reads "Katie M. Brown".

Katie M. Brown

Enclosure

cc: James T. Simmons (via U.S. Mail and email)
Alexander W. Knowles, Office of Regulatory Staff (via email)
C. Lessie Hammonds, Office of Regulatory Staff (via email)
Carri Grube Lybarker, Department of Consumer Affairs (via email)
Roger P. Hall, Department of Consumer Affairs (via email)
Heather Shirley Smith, Duke Energy Carolinas, LLC (via email)
Rebecca J. Dulin, Duke Energy Carolinas, LLC (via email)

EXHIBIT A

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2021-95-E

IN RE:

JAMES T. SIMMONS)	
Complainant/Petitioner,)	
)	
v.)	DUKE ENERGY CAROLINAS, LLC'S
)	FIRST SET OF INTERROGATORIES TO
)	COMPLAINANT
DUKE ENERGY CAROLINAS, LLC)	
Defendant/Respondent.)	
_____)	

Duke Energy Carolinas, LLC ("DEC"), by and through its legal counsel, pursuant to Rule 103-833 of the Rules of Practice and Procedure of the South Carolina Public Service Commission, hereby serves James T. Simmons ("Complainant") with the following First Set of Interrogatories to be answered **on or before June 30, 2021**.

Please note that these Interrogatories are continuing in nature until the date of the hearing, and that any information or responsive materials identified after your responses have been served upon the undersigned counsel should be provided to counsel for DEC through supplemental responses as soon as possible after such identification.

INSTRUCTIONS

1. Please provide responses to the following requests electronically via email to Katie.Brown2@duke-energy.com and swellborn@robinsongray.com. To the extent this is impracticable, the responses, including any responsive documents, should be provided at the offices of Robinson, Gray, Stepp & Laffitte, LLC, 1310 Gadsden Street, Columbia, South Carolina 29201 on or before June 30, 2021.

EXHIBIT A

2. Please sign and date the Certification that follows these Interrogatories.

Dated this 10th day of June, 2021.

s/ Katie M. Brown

Katie M. Brown, Counsel
Duke Energy Carolinas, LLC
40 West Broad Street, Suite 690
Greenville, SC 29601
Telephone (864) 370-5045
Katie.brown2@duke-energy.com

Samuel J. Wellborn (SC Bar No. 101979)
ROBINSON GRAY STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
swellborn@robinsongray.com

Attorneys for Duke Energy Carolinas, LLC

EXHIBIT A

INTERROGATORIES

RESPONSE:

- 1-1 Please describe the type of heating you use in your residence (e.g., gas furnace, oil furnace, electric furnace, boiler, heat pump, hybrid heating, radiant heating, baseboard heaters, etc.).

RESPONSE:

- 1-2 Please provide the date(s) on which your heating device(s) were purchased and installed, and the date they were last serviced.

RESPONSE:

- 1-3 Please describe the type of residence in which you live (e.g., single-family home, condominium, apartment, townhome, mobile home, manufactured home, etc.).

RESPONSE:

- 1-4 Please describe the type of material used for the following elements of your residence:
- (a) Exterior walls (e.g., brick, wood, aluminum, etc.)
 - (b) Roof (e.g., asphalt shingles, cedar shingles, aluminum, etc.)
 - (c) Interior walls (e.g., drywall, plaster, vinyl, etc.)
 - (d) Flooring (e.g., vinyl, wood, tile, etc.)

RESPONSE:

- 1-5 Please describe the type of insulation used, if any, in the following areas of your home:
- (a) Walls (e.g., no insulation, blown insulation, bat insulation, etc.)
 - (b) Above living space / attic (e.g., no insulation, blown insulation, bat insulation, etc.)
 - (c) Below living space / crawlspace (e.g., no insulation, blown insulation, bat insulation, etc.)
 - (d) Around HVAC ductwork
 - (e) Around water heater

RESPONSE:

- 1-6 Please describe the type of windows used in your home (e.g., single-pane, double-pane, triple-pane, etc.) and when the windows were installed.

RESPONSE:

- 1-7 Please list and describe any electric devices that are used in your home (e.g., water heater, electric heaters, pool pumps, etc.).

EXHIBIT A

RESPONSE:

- 1-8 Please provide a detailed description of your electricity use throughout the year. Please include the following information:
- a) At what temperature do you set your thermostat during the summer?
 - b) At what temperature do you set your thermostat during the winter?
 - c) How often do you replace your HVAC air filters?
 - d) What temperature is your hot water heater set to throughout the year?

RESPONSE:

- 1-9 Do you use any energy efficient devices in your home including, but not limited to, the following?
- a) Energy efficient heat pump
 - b) Energy efficient electric strip
 - c) Smart thermostat
 - d) LED lighting
 - e) Energy usage monitor

RESPONSE:

- 1-10 Do you use gas or electricity for water heating?

RESPONSE:

- 1-11 Please provide the date of your last HVAC service, including having any ductwork inspected.

RESPONSE:

- 1-12 Please provide the number of people who reside in your home year-round, including any guests.

RESPONSE:

- 1-13 If any individuals reside in your home only during certain months (such as during the summer or winter months), please provide the number of such persons, and specify which months they reside in your home.

RESPONSE:

EXHIBIT A

- 1-14 Please state whether you have requested and had completed a Home Energy House Call, an energy efficiency program offered by Duke Energy Carolinas, and if not, please provide the reason.

RESPONSE:

- 1-15 Please describe the location of your water heater (e.g., outside the house, inside an interior closet, etc.) and whether the water heater has a “blanket” or other insulation.

RESPONSE:

CERTIFICATION

I, James T. Simmons, state that the contents of these Responses to Interrogatories are true, accurate and correct to the best of my knowledge, information and belief. I certify that the foregoing statement made by me is true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

(SIGNATURE)

(DATE)

EXHIBIT A

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2021-95-E

IN RE:

James T. Simmons,
Complainant,

v.

Duke Energy Carolinas, LLC,
Respondent

CERTIFICATE OF SERVICE

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC, does hereby certify that she has served the persons listed below with a copy of Duke Energy Carolinas, LLC's First Set of Interrogatories to Complainant in the above-captioned proceedings via electronic mail and U.S. Mail as specified below on June 10, 2021.

Alexander Knowles
Office of Regulatory Staff
aknowles@ors.sc.gov

C. Lessie Hammonds
Office of Regulatory Staff
lhammonds@ors.sc.gov

Carri Grube Lybarker
SC Department of Consumer Affairs
clybarker@scconsumer.gov

Roger P. Hall
SC Department of Consumer Affairs
rhall@scconsumer.gov

Heather Shirley Smith
Duke Energy Carolinas, LLC
heather.smith@duke-energy.com

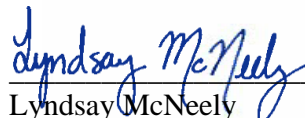
Rebecca J. Dulin
Duke Energy Carolinas, LLC
rebecca.dulin@duke-energy.com

James T. Simmons
62 Fisher Drive
Spartanburg, SC 29303
mstsimmons2002@gmail.com

Katie M. Brown
Duke Energy Carolinas, LLC
katie.brown2@duke-energy.com

Samuel J. Wellborn
Robinson Gray Stepp & Laffitte, LLC
swellborn@robinsongray.com

Dated this 10th day of June, 2021.


Lyndsay McNeely

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021-95-E

IN RE:)
)
 James T. Simmons,)
 Complainant,)
 v.)
)
 Duke Energy Carolinas, LLC,)
 Respondent)

CERTIFICATE OF SERVICE

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC, does hereby certify that she has served the persons listed below with a copy of Duke Energy Carolinas, LLC's Motion to Compel Responses to Interrogatories by Complainant in the above-captioned proceedings via electronic mail and U.S. Mail as specified below on July 15, 2021.

Alexander Knowles
 Office of Regulatory Staff
aknowles@ors.sc.gov

C. Lessie Hammonds
 Office of Regulatory Staff
lhammonds@ors.sc.gov

Carri Grube Lybarker
 SC Department of Consumer Affairs
clybarker@scconsumer.gov

Roger P. Hall
 SC Department of Consumer Affairs
rhall@scconsumer.gov

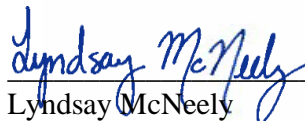
Heather Shirley Smith
 Duke Energy Carolinas, LLC
heather.smith@duke-energy.com

James T. Simmons
 62 Fisher Drive
 Spartanburg, SC 29303
mstsimmons2002@gmail.com

Katie M. Brown
 Duke Energy Carolinas, LLC
katie.brown2@duke-energy.com

Samuel J. Wellborn
 Robinson Gray Stepp & Laffitte, LLC
swellborn@robinsongray.com

Dated this 15th day of July, 2021.


 Lyndsay McNeely